

Exhibit D

1
2 AMERICAN ARBITRATION ASSOCIATION
NEW YORK, NEW YORK - COMMERCIAL RULES
3 No. 13 148 Y 01803 10

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4 MORRY WEISS, Individually, JUDY WEISS
Individually and as Trustee,
5 IRVING I. STONE FOUNDATION and
SAPIRSTEIN-STONE-WEISS FOUNDATION,

6
Claimants,

7
vs.

8 J. EZRA MERKIN,

9
Respondent.

10 ----- -x

11 Pryor Cashman LLP
Seven Times Square
New York, New York 10003-6569

12
August 11, 2011
13 9:09 a.m.

14 B E F O R E:

15 JOHN R. HOLSINGER, ESQ. - The Chairman
THOMAS J. FLEMING, ESQ. - Panel Member
16 DONALD S. ZAKARIN, ESQ. - Panel Member

17
18 Amy Klein Campion - Hearing Reporter
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<p style="text-align: right;">670</p> <p>1 J.E. Merkin - Direct/Levander 2 were supposed to get it back at the value 3 we were supposed to get it back. 4 And, if anything, there were 5 occasions when we wanted to invest 6 additional capital and he didn't take it. 7 Q. Mr. Bamberger tried to suggest 8 to you before something about how you had 9 a one-year lockup versus Fairfield 10 Greenwich's 30 days. 11 Do you remember that series of 12 questions? 13 A. I do. 14 Q. I think Mr. Bamberger is mixing 15 apples and oranges. 16 Could you tell us what the 17 nature of Ascot's investment was with 18 Madoff? 19 A. Ascot had managed account 20 agreements with the Madoff office. Those 21 gave us daily outs. 22 We had other arrangements with 23 our investors. But one shouldn't confuse 24 Ascot's investors and Ascot's contractual 25 arrangements as part of, say, the limited</p>	<p style="text-align: right;">672</p> <p>1 J.E. Merkin - Direct/Levander 2 But I certainly knew that Madoff 3 had lots of managed account clients, or 4 his firm had a lot of managed account 5 clients. 6 I wouldn't assume it's different 7 from a managed account at Goldman Sachs 8 account. You can call up any day and say 9 I want the money back. 10 Q. I also want you to address some 11 of the questions and suggestions and 12 arguments Mr. Bamberger has made about 13 your due diligence. 14 Mr. Bamberger has questioned 15 whether Madoff's low volatility returns 16 were a red flag to you, in essence. 17 Do you agree that they were any 18 kind of warning sign? 19 A. No. 20 Q. Why not? 21 A. Because I had -- have spent time 22 professionally looking at any number of 23 money managers who run very low volatility 24 portfolios that perform at Madoff-like 25 percentages of positive months over</p>
<p style="text-align: right;">671</p> <p>1 J.E. Merkin - Direct/Levander 2 partnership agreement, with what we were 3 doing with Madoff. 4 We had the right to remove money 5 from the Madoff office every single day. 6 If we were in treasuries it was 7 a piece of cake. If we were in positions, 8 and say we needed -- just to give an 9 example -- needed to trim 20 percent of 10 the positions because we had a redemption 11 or because I wanted to do something else 12 with the money, you gave an order. These 13 were highly liquid securities. It's not 14 to say that you won't make or lose 15 something on the way out in a very small 16 away, but T+1, T+2, T+3, you get the 17 money. 18 And so the accounts were 19 extraordinarily liquid. 20 I didn't know about the Tremont 21 arrangements, but -- 22 Q. I said the Fairfield 23 arrangements. 24 A. The Fairfield arrangements, 25 sorry.</p>	<p style="text-align: right;">673</p> <p>1 J.E. Merkin - Direct/Levander 2 periods of decades, and was very 3 interested in those, precisely because I 4 thought they made a great deal of sense 5 for the two investment committees I was 6 chairing, the Yeshiva University 7 Investment Committee and UJA Investment 8 Committee. 9 So looking at low volatility 10 fund management was a significant theme in 11 the office, and I knew of performances 12 that were less volatile than Madoff's and 13 had, frankly, better numbers, and I 14 certainly knew of performances that were 15 in line with his volatility. 16 Q. Could you give us the names of 17 three or four well-known funds that had 18 more than 10 years, maybe even 20 years, 19 maybe even 30 years, of track records of 20 low volatility and returns that were at 21 least as good as Madoff's? 22 A. Well, long track records of low 23 volatility that come to mind are 24 Millennium, which probably had something 25 close to 90 percent up months, and that</p>

73 (Pages 670 to 673)

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<p style="text-align: right;">674</p> <p>1 J.E. Merkin - Direct/Levander 2 would probably be something like a 20-year 3 record. 4 Elliott Associates, which was 5 Paul Singer's original domestic limited 6 partnership, I think is at year -- today 7 is at year number 33 or 34 with positive 8 compounding at extraordinarily high levels 9 of positive months year after year after 10 year and period after period after period. 11 We look for these kinds of 12 funds. Those are two that come to mind. 13 I can think of more. 14 Q. What about Steve Cohen? 15 MR. BAMBERGER: Objection; 16 leading. 17 THE CHAIRMAN: What about what? 18 MR. LEVANDER: Steve Cohen. 19 MR. BAMBERGER: Objection; 20 leading. 21 THE CHAIRMAN: Overruled. 22 A. SAC is certainly one that I had 23 in mind when I said I can think of some 24 more. 25 Steve had, through into the '08</p>	<p style="text-align: right;">676</p> <p>1 J.E. Merkin - Direct/Levander 2 time. 3 MR. LEVANDER: Again, we have 4 records that corroborate what he just 5 said -- 6 THE CHAIRMAN: You can point 7 that out to us in briefs. 8 MR. LEVANDER: That's exactly my 9 intention. 10 THE CHAIRMAN: Fair enough. 11 BY MR. LEVANDER: 12 Q. Mr. Bamberger asked you about 13 Madoff skeptics. 14 Can you first tell us what your 15 view is in terms of the number of people 16 you spoke to that had very positive views 17 about Mr. Madoff versus the number of 18 skeptics? 19 A. The sheer number of people who 20 were -- who were positive about Madoff was 21 much larger in number and is a significant 22 multiple of the people who expressed some 23 skepticism. Four or five times. It is a 24 much, much larger number of persons. 25 The skeptics and the skepticism</p>
<p style="text-align: right;">675</p> <p>1 J.E. Merkin - Direct/Levander 2 period -- I can't say this for a fact, but 3 I'm guessing -- a smaller percentage of 4 down months than Madoff did, and returns 5 that probably started at twice his returns 6 and moved up from there. 7 And we're talking about periods 8 measured in decades. 9 Q. Have you ever heard of a company 10 called Baupost? 11 THE CHAIRMAN: What's the name 12 of it? 13 MR. LEVANDER: Baupost. 14 A. Baupost is managed by Seth 15 Carmen up in Boston. 16 These are all names -- 17 Millennium, Baupost -- that we used for 18 the endowments that I had recommended for 19 consideration by the investment 20 committees for their folks. 21 Seth has been doing this 22 original stuff, I think it's over 20 23 years, I think it's close to 25 years, 24 with just extremely favorable, positive 25 compounding over that entire period of</p>	<p style="text-align: right;">677</p> <p>1 J.E. Merkin - Direct/Levander 2 actually declined over time. As the 3 performance kept coming, people just -- 4 there was -- one heard less of skepticism. 5 And some of the skeptics carped 6 at Madoff. Some of that was back-biting, 7 fault-finding, and forms of competition 8 within the industry. 9 Q. Did anyone that talked to you 10 prior to December 11, 2008 ever suggest 11 that Mr. Madoff was engaged in a Ponzi 12 scheme? 13 A. No. Absolutely not. 14 Q. Mr. Bamberger has put into his 15 exhibits some statements of Mr. Markopolos 16 which he sent to the SEC prior to December 17 11, 2008. 18 Did you see anything from 19 Mr. Markopolos, or hear about 20 Mr. Markopolos, prior to December 11, 21 2008? 22 A. No. I didn't hear anything 23 about that until the end of 2009. 24 Q. Those were sent to the SEC; is 25 that right?</p>

74 (Pages 674 to 677)

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